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December 19, 2006

The Honorable Mary Pat Thyng
J. Caleb Boggs Federal Building
844 N. King Street
Room 6100
Lockbox 8
Wilmington, DE 19801

Re: *Biovail v. Andrx Pharmaceuticals LLC et al.*,
C.A. No. 1:05-cv-0586-***

Dear Judge Thyng:

Defendant Andrx Pharmaceuticals writes in response to the December 18, 2006 letter from plaintiff Biovail in the above-referenced case. We know that Your Honor's docket is extremely crowded, but we felt it necessary to correct the record in this ANDA case, where every day of delay benefits plaintiff. Contrary to Biovail's implications, Biovail has only itself to blame for its default in failing to respond to Andrx's Motion for Summary Judgment of Non-Infringement of U.S. Patent No. 5,529,791 (D.I. 108). Although not mentioned by Biovail, Andrx offered Biovail an extension – which Biovail refused – that would have obviated Biovail's default and also would have avoided the immediate impact of the transfer of Judge Jordan's docket to Your Honor. Similarly, we are prepared at Your Honor's earliest convenience to discuss the scheduling of depositions that Biovail has refused to schedule, again using delay to its benefit. As stated in our December 14 letter to Your Honor and Judge Jordan, we stand ready to address this scheduling issue at Your Honor's earliest convenience.

Respectfully submitted,

/s/ Richard L. Horwitz

Richard L. Horwitz

RLH:nmt/768133/30015
cc: Clerk of the Court (via Hand Delivery)
Counsel of Record (via Electronic Mail)